

STATE OF MICHIGAN
COURT OF APPEALS

KRISTEN A. KHURANA,

Plaintiff-Appellee,

v

SURESH P. KHURANA,

Defendant-Appellant.

UNPUBLISHED

April 26, 2007

No. 268792

Wayne Circuit Court

LC No. 95-508858-DM

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order granting plaintiff's motion to modify the spousal support provision of the parties' 1995 divorce judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a stay-at-home housewife and mother during the parties' 23-year marriage, and did not earn any income during that period. She also had attention deficit disorder (ADD) and read at a third-grade level. The parties' 1995 judgment of divorce required defendant to pay plaintiff spousal support of \$2,000 a month for 120 consecutive months, or until she either remarried, died, or resided and cohabited with an unrelated male, unless otherwise ordered by the court. A few months before the spousal support award was scheduled to expire, plaintiff moved to modify the judgment to extend the support obligation indefinitely. Following an evidentiary hearing, the trial court found that there were changed circumstances sufficient to justify an extension of the spousal support provision and ordered defendant to continue paying \$2,000 a month until plaintiff either died, remarried, or resided and cohabited with an unrelated male, unless otherwise ordered by the court.

Defendant argues on appeal that the trial court erred in finding that there were changed circumstances to justify a modification and extension of the spousal support award.

This Court reviews a trial court's factual findings relating to a modification of spousal support for clear error. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *Id.* at 655. The trial court's decision must be affirmed unless this Court is firmly convinced that it was inequitable. *Gates v Gates*, 256 Mich App 420, 433; 664 NW2d 231 (2003).

Modification of an award of spousal support must be based on new facts or changed circumstances arising after the judgment of divorce. *Id.* at 434. The party seeking modification bears the burden of proving new facts or changed circumstances. *Id.* Inflation is a relevant consideration in determining whether a judgment of divorce should be modified, but is only one factor to be considered. *Rapaport v Rapaport*, 158 Mich App 741, 746; 405 NW2d 165, modified by 429 Mich 876 (1987).

The trial court did not clearly err in finding changed circumstances to justify modification of the spousal support award. Although plaintiff had ADD, minimal education, and inauspicious job prospects at the time of the divorce in 1995, the nature of these circumstances was not static. In 1995, the trial court could not know what efforts plaintiff would make to improve her employability, or whether those efforts would be fruitful. The trial court found that plaintiff tried to improve her prospects by entering a rehabilitative program for persons with ADD, and by trying to earn an income in sales and photography, but made only minimal progress. Additionally, plaintiff developed a pilonidal cyst and a degenerative bone disease in her knees and recently had knee surgery that further impaired her ability to find employment. The trial court did not clearly err in finding that plaintiff's failure to materially improve her employment prospects despite efforts to do so over a ten-year period, combined with her more recent medical problems, constituted new facts or a change of circumstances to justify continuation of the spousal support award. The trial court also properly considered inflation as a factor justifying the modification. *Rapaport, supra* at 746.

Finally, considering plaintiff's situation and defendant's increase in income, we are not convinced that the extension of spousal support was inequitable.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello